

“(1) the air carrier or foreign air carrier fails to deliver the checked baggage to the passenger—

“(A) not later than 12 hours after the arrival of a domestic flight; or

“(B) not later than 15 hours after the arrival of an international flight; and

“(2) the passenger has notified the air carrier or foreign air carrier of the lost or delayed checked baggage.

“(b) EXCEPTION.—If, as part of the rulemaking, the Secretary makes a determination on the record that a requirement under subsection (a) is not feasible and would adversely affect consumers in certain cases, the Secretary may modify 1 or both of the deadlines specified in subsection (a)(1) for such cases, except that—

“(1) the deadline relating to a domestic flight may not exceed 18 hours after the arrival of the domestic flight; and

“(2) the deadline relating to an international flight may not exceed 30 hours after the arrival of the international flight.”

#### § 41705. Discrimination against handicapped individuals

(a) IN GENERAL.—In providing air transportation, an air carrier, including (subject to section 40105(b)) any foreign air carrier, may not discriminate against an otherwise qualified individual on the following grounds:

(1) the individual has a physical or mental impairment that substantially limits one or more major life activities.

(2) the individual has a record of such an impairment.

(3) the individual is regarded as having such an impairment.

(b) EACH ACT CONSTITUTES SEPARATE OFFENSE.—For purposes of section 46301, a separate violation occurs under this section for each individual act of discrimination prohibited by subsection (a).

(c) INVESTIGATION OF COMPLAINTS.—

(1) IN GENERAL.—The Secretary shall investigate each complaint of a violation of subsection (a).

(2) PUBLICATION OF DATA.—The Secretary shall publish disability-related complaint data in a manner comparable to other consumer complaint data.

(3) REVIEW AND REPORT.—The Secretary shall regularly review all complaints received by air carriers alleging discrimination on the basis of disability and shall report annually to Congress on the results of such review.

(4) TECHNICAL ASSISTANCE.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall—

(A) implement a plan, in consultation with the Department of Justice, the United States Architectural and Transportation Barriers Compliance Board, and the National Council on Disability, to provide technical assistance to air carriers and individuals with disabilities in understanding the rights and responsibilities set forth in this section; and

(B) ensure the availability and provision of appropriate technical assistance manuals to individuals and entities with rights or responsibilities under this section.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1141; Pub. L. 106–181, title VII, §707(a), Apr. 5, 2000, 114

Stat. 158; Pub. L. 108–176, title V, §503(d)(1), Dec. 12, 2003, 117 Stat. 2559.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41705 .....	49 App.:1374(c).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §404(c); added Oct. 2, 1986, Pub. L. 99–435, §2(a), 100 Stat. 1080.

In this section, before clause (1), the words “on the following grounds” are substituted for “by reason of such handicap” and “For purposes of paragraph (1) of this subsection the term ‘handicapped individual’ means any individual who” because of the restatement.

#### Editorial Notes

##### REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(4), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

##### AMENDMENTS

2003—Subsec. (b). Pub. L. 108–176 substituted “section 46301” for “section 46301(a)(3)(E)”.

2000—Pub. L. 106–181 designated existing provisions as subsec. (a), inserted heading, substituted “carrier, including (subject to section 40105(b)) any foreign air carrier,” for “carrier” in introductory provisions, and added subsecs. (b) and (c).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

##### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as a note under section 106 of this title.

##### REGULATIONS ENSURING ASSISTANCE FOR PASSENGERS WITH DISABILITIES IN AIR TRANSPORTATION

Pub. L. 115–254, div. B, title IV, §440, Oct. 5, 2018, 132 Stat. 3347, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Oct. 5, 2018], the Secretary of Transportation shall—

“(1) review, and if necessary revise, applicable regulations to ensure that passengers with disabilities who request assistance while traveling in air transportation receive dignified, timely, and effective assistance at airports and on aircraft from trained personnel; and

“(2) review, and if necessary revise, applicable regulations related to covered air carrier training programs for air carrier personnel, including contractors, who provide physical assistance to passengers with disabilities to ensure that training under such programs—

“(A) occurs on an annual schedule for all new and continuing personnel charged with providing physical assistance; and

“(B) includes, as appropriate, instruction by personnel, with hands-on training for employees who physically lift or otherwise physically assist passengers with disabilities, including the use of relevant equipment.

“(b) TYPES OF ASSISTANCE.—The assistance referred to [in] subsection (a)(1) may include requests for assistance in boarding or deplaning an aircraft, requests for assistance in connecting between flights, and other similar or related requests, as appropriate.”

[For definition of “covered air carrier” as used in section 440 of Pub. L. 115-254, set out above, see section 401 of Pub. L. 115-254, set out as a Definitions of Terms in Pub. L. 115-254 note under section 40101 of this title.]

#### AIRLINE PASSENGERS WITH DISABILITIES BILL OF RIGHTS

Pub. L. 115-254, div. B, title IV, § 434, Oct. 5, 2018, 132 Stat. 3343, provided that:

“(a) AIRLINE PASSENGERS WITH DISABILITIES BILL OF RIGHTS.—The Secretary of Transportation shall develop a document, to be known as the ‘Airline Passengers with Disabilities Bill of Rights’, using plain language to describe the basic protections and responsibilities of covered air carriers, their employees and contractors, and people with disabilities under the [sic] section 41705 of title 49, United States Code.

“(b) CONTENT.—In developing the Airline Passengers with Disabilities Bill of Rights under subsection (a), the Secretary shall include, at a minimum, plain language descriptions of protections and responsibilities provided in law related to the following:

“(1) The right of passengers with disabilities to be treated with dignity and respect.

“(2) The right of passengers with disabilities to receive timely assistance, if requested, from properly trained covered air carrier and contractor personnel.

“(3) The right of passengers with disabilities to travel with wheelchairs, mobility aids, and other assistive devices, including necessary medications and medical supplies, including stowage of such wheelchairs, aids, and devices.

“(4) The right of passengers with disabilities to receive seating accommodations, if requested, to accommodate a disability.

“(5) The right of passengers with disabilities to receive announcements in an accessible format.

“(6) The right of passengers with disabilities to speak with a complaint resolution officer or to file a complaint with a covered air carrier or the Department of Transportation.

“(c) RULE OF CONSTRUCTION.—The development of the Airline Passengers with Disabilities Bill of Rights under subsections (a) and (b) shall not be construed as expanding or restricting the rights available to passengers with disabilities on the day before the date of the enactment of this Act [Oct. 5, 2018] pursuant to any statute or regulation.

“(d) CONSULTATIONS.—In developing the Airline Passengers with Disabilities Bill of Rights under subsection (a), the Secretary of Transportation shall consult with stakeholders, including disability organizations and covered air carriers and their contractors.

“(e) DISPLAY.—Each covered air carrier shall include the Airline Passengers with Disabilities Bill of Rights—

“(1) on a publicly available internet website of the covered air carrier; and

“(2) in any pre-flight notifications or communications provided to passengers who alert the covered air carrier in advance of the need for accommodations relating to a disability.

“(f) TRAINING.—Covered air carriers and contractors of covered air carriers shall submit to the Secretary of Transportation plans that ensure employees of covered air carriers and their contractors receive training on the protections and responsibilities described in the Airline Passengers with Disabilities Bill of Rights. The Secretary shall review such plans to ensure the plans address the matters described in subsection (b).”

[For definition of “covered air carrier” as used in section 434 of Pub. L. 115-254, set out above, see section 401 of Pub. L. 115-254, set out as a Definitions of Terms in Pub. L. 115-254 note under section 40101 of this title.]

#### HARMONIZATION OF SERVICE ANIMAL STANDARDS

Pub. L. 115-254, div. B, title IV, § 437, Oct. 5, 2018, 132 Stat. 3344, provided that:

“(a) RULEMAKING.—The Secretary of Transportation shall conduct a rulemaking proceeding—

“(1) to define the term ‘service animal’ for purposes of air transportation; and

“(2) to develop minimum standards for what is required for service and emotional support animals carried in aircraft cabins.

“(b) CONSIDERATIONS.—In conducting the rulemaking under subsection (a), the Secretary shall consider, at a minimum—

“(1) whether to align the definition of ‘service animal’ with the definition of that term in regulations of the Department of Justice implementing the Americans with Disabilities Act of 1990 (Public Law 101-336) [42 U.S.C. 12101 et seq.];

“(2) reasonable measures to ensure pets are not claimed as service animals, such as—

“(A) whether to require photo identification for a service animal identifying the type of animal, the breed of animal, and the service the animal provides to the passenger;

“(B) whether to require documentation indicating whether or not a service animal was trained by the owner or an approved training organization;

“(C) whether to require, from a licensed physician, documentation indicating the mitigating task or tasks a service animal provides to its owner; and

“(D) whether to allow a passenger to be accompanied by more than 1 service animal;

“(3) reasonable measures to ensure the safety of all passengers, such as—

“(A) whether to require health and vaccination records for a service animal; and

“(B) whether to require third-party proof of behavioral training for a service animal;

“(4) the impact additional requirements on service animals could have on access to air transportation for passengers with disabilities; and

“(5) if impacts on access to air transportation for passengers with disabilities are found, ways to eliminate or mitigate those impacts.

“(c) FINAL RULE.—Not later than 18 months after the date of enactment of this Act [Oct. 5, 2018], the Secretary shall issue a final rule pursuant to the rulemaking conducted under this section.”

#### ADVISORY COMMITTEE ON THE AIR TRAVEL NEEDS OF PASSENGERS WITH DISABILITIES

Pub. L. 115-254, div. B, title IV, § 439, Oct. 5, 2018, 132 Stat. 3345, provided that:

“(a) ESTABLISHMENT.—The Secretary of Transportation shall establish an advisory committee on issues related to the air travel needs of passengers with disabilities (referred to in this section as the ‘Advisory Committee’).

“(b) DUTIES.—The Advisory Committee shall—

“(1) identify and assess the disability-related access barriers encountered by passengers with disabilities;

“(2) determine the extent to which the programs and activities of the Department of Transportation are addressing the barriers identified in paragraph (1);

“(3) recommend consumer protection improvements to the air travel experience of passengers with disabilities;

“(4) advise the Secretary with regard to the implementation of section 41705 of title 49, United States Code; and

“(5) conduct such activities as the Secretary considers necessary to carry out this section.

“(c) MEMBERSHIP.—

“(1) IN GENERAL.—The Advisory Committee shall be composed of at least 1 representative of each of the following groups:

“(A) Passengers with disabilities.

“(B) National disability organizations.

“(C) Air carriers.

“(D) Airport operators.

“(E) Contractor service providers.

“(F) Aircraft manufacturers.

“(G) Wheelchair manufacturers.

“(H) National veterans organizations representing disabled veterans.

“(2) APPOINTMENT.—The Secretary of Transportation shall appoint each member of the Advisory Committee.

“(3) VACANCIES.—A vacancy in the Advisory Committee shall be filled in the manner in which the original appointment was made.

“(d) CHAIRPERSON.—The Secretary of Transportation shall designate, from among the members appointed under subsection (c), an individual to serve as chairperson of the Advisory Committee.

“(e) TRAVEL EXPENSES.—Members of the Advisory Committee shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

“(f) REPORTS.—

“(1) IN GENERAL.—Not later than 14 months after the date of establishment of the Advisory Committee, and annually thereafter, the Advisory Committee shall submit to the Secretary of Transportation a report on the needs of passengers with disabilities in air travel, including—

“(A) an assessment of existing disability-related access barriers, and any emerging disability-related access barriers that will likely be an issue in the next 5 calendar years;

“(B) an evaluation of the extent to which the Department of Transportation’s programs and activities are eliminating disability-related access barriers;

“(C) a description of the Advisory Committee’s actions;

“(D) a description of improvements related to the air travel experience of passengers with disabilities; and

“(E) any recommendations for legislation, administrative action, or other action that the Advisory Committee considers appropriate.

“(2) REPORT TO CONGRESS.—Not later than 60 days after the date the Secretary receives the report under paragraph (1), the Secretary shall submit to the appropriate committees of Congress [Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives] a copy of the report, including any additional findings or recommendations that the Secretary considers appropriate.

“(g) TERMINATION.—The Advisory Committee established under this section shall terminate on September 30, 2023.

“(h) TERMINATION OF THE NEXT GENERATION AIR TRANSPORTATION SYSTEM SENIOR POLICY COMMITTEE.—The Next Generation Air Transportation System Senior Policy Committee established by the Secretary of Transportation shall terminate on the date of the initial appointment of the members of the Advisory Committee.”

#### TRAINING POLICIES REGARDING ASSISTANCE FOR PERSONS WITH DISABILITIES

Pub. L. 115–254, div. B, title IV, § 433, Oct. 5, 2018, 132 Stat. 3342, provided that: “Following the receipt of the report required under section 2107 of the FAA Extension, Safety, and Security Act of 2016 (Public Law 114–190; 130 Stat. 622) [set out below], the Secretary of Transportation shall develop, if appropriate, specific recommendations regarding improvements to wheelchair assistance provided by air carriers and recommendations on how training programs by air carriers can address consumer complaints regarding wheelchair assistance.”

Pub. L. 114–190, title II, § 2107, July 15, 2016, 130 Stat. 622, provided that:

“(a) IN GENERAL.—Not later than 270 days after the date of enactment of this Act [July 15, 2016], the Comptroller General of the United States shall submit to Congress a report assessing required air carrier personnel and contractor training programs regarding the assistance of persons with disabilities, including—

“(1) variations in training programs between air carriers;

“(2) instances since 2005 where the Department of Transportation has requested that an air carrier take corrective action following a review of the air carrier’s training programs; and

“(3) actions taken by air carriers following requests described in paragraph (2).

“(b) BEST PRACTICES.—After the date the report is submitted under subsection (a), the Secretary of Transportation, based on the findings of the report, shall develop, make publicly available, and appropriately disseminate to air carriers such best practices as the Secretary considers necessary to improve the reviewed training programs.”

#### ESTABLISHMENT OF HIGHER INTERNATIONAL STANDARDS

Pub. L. 106–181, title VII, § 707(c), Apr. 5, 2000, 114 Stat. 158, provided that: “The Secretary [of Transportation] shall work with appropriate international organizations and the aviation authorities of other nations to bring about the establishment of higher standards for accommodating handicapped passengers in air transportation, particularly with respect to foreign air carriers that code-share with air carriers.”

#### RESTRICTIONS ON AIR TRANSPORTATION OF PEANUTS; SCIENTIFIC STUDY ON EFFECT OF AIRBORNE PARTICLES ON PASSENGERS

Pub. L. 106–69, title III, § 346, Oct. 9, 1999, 113 Stat. 1023, provided that: “Hereafter, none of the funds made available under this Act or any other Act, may be used to implement, carry out, or enforce any regulation issued under section 41705 of title 49, United States Code, including any regulation contained in part 382 of title 14, Code of Federal Regulations, or any other provision of law (including any Act of Congress, regulation, or Executive order or any official guidance or correspondence thereto), that requires or encourages an air carrier (as that term is defined in section 40102 of title 49, United States Code) to, on intrastate or interstate air transportation (as those terms are defined in section 40102 of title 49, United States Code)—

“(1) provide a peanut-free buffer zone or any other related peanut-restricted area; or

“(2) restrict the distribution of peanuts, until 90 days after submission to the Congress and the Secretary of a peer-reviewed scientific study that determines that there are severe reactions by passengers to peanuts as a result of contact with very small airborne peanut particles of the kind that passengers might encounter in an aircraft.”

Similar provisions were contained in Pub. L. 105–277, div. A, § 101(g) [title III, § 372], Oct. 21, 1998, 112 Stat. 2681–439, 2681–479.

#### § 41706. Prohibitions against smoking on passenger flights

(a) SMOKING PROHIBITION IN INTERSTATE AND INTRASTATE AIR TRANSPORTATION.—An individual may not smoke—

(1) in an aircraft in scheduled passenger interstate or intrastate air transportation; or

(2) in an aircraft in nonscheduled passenger interstate or intrastate air transportation, if a flight attendant is a required crewmember on the aircraft (as determined by the Administrator of the Federal Aviation Administration).

(b) SMOKING PROHIBITION IN FOREIGN AIR TRANSPORTATION.—The Secretary of Transportation shall require all air carriers and foreign air carriers to prohibit smoking—

(1) in an aircraft in scheduled passenger foreign air transportation; and

(2) in an aircraft in nonscheduled passenger foreign air transportation, if a flight attend-